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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2011-537

11 **LETA ROCHELLE SIMMONS**

12 **3850 Pine Forest Avenue**
13 **Montgomery, AL 36116**

DEFAULT DECISION AND ORDER

14 **Registered Nurse License No. 658167**

[Gov. Code, §11520]

15
16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about December 15, 2010, Complainant Louise R. Bailey, M.Ed., R.N., in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs, filed Accusation No. 2011-537 against Leta Rochelle Simmons (Respondent)
21 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

22 2. On or about May 27, 2005, the Board of Registered Nursing (Board) issued
23 Registered Nurse License No. 658167 to Respondent. The Registered Nurse License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on October 31,
25 2012, unless renewed.

26 3. On or about December 15, 2010, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 2011-537, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
and 11507.7) at Respondent's address of record which, pursuant to Business and Professions

Code section 136 and/or agency specific statute or regulation, is required to be reported and maintained with the Board, which was and is:

3850 Pine Forest Avenue
Montgomery, AL 36116.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2011-537.

7. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-537, finds that the charges and allegations in Accusation No. 2011-537, are separately and severally true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$600.00 as of January 11, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Leta Rochelle Simmons has subjected her Registered Nurse License No. 658167 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The following violations alleged in the accusation are supported by the evidence contained in the Default Decision Investigatory Evidence Packet, authorizing the Board of Registered Nursing to revoke Respondent's Registered Nurse License:

a. Business and Professions Code section 2761(a)(4) for the indefinite suspension of Respondent's South Carolina nursing license for diverting prescription drugs;

b. Business and Professions Code section 2761(a) for unprofessional conduct for falsifying records to divert prescription drugs for her own use;

c. Business and Professions Code section 2762(a) and 2762(e) for falsifying hospital records to obtain controlled substances; and

d. Business and Professions Code section 2761(e) for false statements on her California Registered Nurse License renewal form by denying that she had been disciplined by a government agency or other disciplinary body.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 658167, heretofore issued to Respondent Leta Rochelle Simmons, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 7, 2011.

It is so ORDERED March 8, 2011



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

60599801.DOCX
DOJ Matter ID:LA2010601221

Attachment:

Exhibit A: Accusation

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2011-537*

13 **Leta Rochelle Simmons**

14 **3850 Pine Forest Avenue**
15 **Montgomery, AL 36116**

16 **Registered Nurse License No. 658167**

Respondent.

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about May 27, 2005, the Board of Registered Nursing issued Registered Nurse
23 License Number 658167 to Leta Rochelle Simmons ("Respondent"). The Registered Nurse
24 License was in full effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2012 unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws:

1 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
2 part, that the Board may discipline any licensee, including a licensee holding a temporary or
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 118 subdivision (b) of the Code grants the Board jurisdiction over suspended,
6 expired, forfeited, cancelled, or surrendered licenses:

7 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
8 board in the department, or its suspension, forfeiture, or cancellation by order of the
9 board or by order of a court of law, or its surrender without the written consent of the
10 board, shall not, during any period in which it may be renewed, restored, reissued, or
11 reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground."

12 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
14 licensee or to render a decision imposing discipline on the license. Under Section 2811
15 subdivision (b) of the Code, the Board may renew an expired license at any time within eight
16 years after the expiration.

17 7. Section 2761 of the Code, which is part of Article 3 of the Nursing Practice Act,
18 provides, in pertinent part:

19 "The board may take disciplinary action against a certified or licensed
nurse or deny an application for a certificate or license for any of the following:

20 (a) Unprofessional conduct, which includes, but is not limited to, the
21 following:

22 (1) Incompetence, or gross negligence in carrying out usual certified or
23 licensed nursing functions.

24 (4) Denial of licensure, revocation, suspension, restriction, or any other
disciplinary action against a health care professional license or certificate by another
25 state or territory of the United States, by any other government agency, or by another
26 California health care professional licensing board. A certified copy of the decision
or judgment shall be conclusive evidence of that action.

27 (e) Making or giving any false statement or information in connection
28 with the application for issuance of a certificate or license."

 8. Section 2762 of the Code provides in full:

 "In addition to other acts constituting unprofessional conduct within the
meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a

person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board, Registrar, or Director may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the South Carolina State Board of Nursing)

10. Respondent is subject to disciplinary action under Section 2761 subdivision (a)(4) because the South Carolina State Board of Nursing ("South Carolina Board") revoked her license to practice nursing in South Carolina. The circumstances of the South Carolina Board's disciplinary action are as follows:

1 11. On or about July 17, 2008, the South Carolina Board made findings of fact, reached
2 conclusions of law and issued a "Final Order" in the disciplinary matter entitled, *In the Matter of*
3 *Leta R. Simmons, R.N., License No. 83595.*

4 12. In its Final Order, the South Carolina Board found that Respondent had twice
5 diverted prescription drugs from her employer by falsifying records. On or about May 17, 2007,
6 while working at Providence Hospital in Columbia, South Carolina, she was arrested for
7 fraudulently obtaining controlled substances and failing to maintain required records by diverting
8 drugs from the hospital. And between November 19 and November 21, 2007, while employed at
9 Palmetto Health Richland Hospital in Columbia, South Carolina, Respondent diverted Demerol
10 for her personal use and improperly documented medical records.

11 13. For these two violations of South Carolina law, the South Carolina Board ordered
12 Respondent's license indefinitely suspended. Respondent could have that suspension stayed if
13 she participated in the South Carolina Recovering Professionals Program and a psychotherapist
14 attested in writing that she had reached a level of recovery where she is deemed safe to return to
15 active practice. The South Carolina Board also imposed probation of at least a year if Respondent
16 were to have her license reinstated.

17 14. Under Section 2761 subdivision (a)(4) of the Code, the indefinite suspension of
18 Respondent's nursing license by South Carolina for diverting prescription drugs is grounds for the
19 Board to take disciplinary action.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 15. By committing the acts set forth in particularity in paragraphs 10 through 14, above,
23 Respondent is subject to disciplinary action on the grounds of unprofessional conduct pursuant to
24 Section 2761 subdivision (a) of the Code because she falsified records to divert prescription drugs
25 for her own use.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Drug-Related Transgressions)**

3 16. By committing the acts set forth in particularity in paragraphs 10 through 14, above,
4 Respondent is subject to disciplinary action under Section 2762 subdivisions (a) and (e) of the
5 Code for falsifying hospital records to obtain controlled substances.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(False Statement on License Application)**

8 17. Paragraphs 10-14 above are re-alleged and incorporated herein by this reference.

9 18. Respondent is subject to disciplinary action under Section 2761(e) of the Code
10 because on or about May 7, 2009, she applied to renew her California Registered Nurse License
11 Number 658167 and made or gave a false statement when she answered "No" to the question
12 "Since You Last Renewed Your License, Have You Had Any License Disciplined By A
13 Government Agency Or Other Disciplinary Body; Or, Have You Been Convicted Of Any Crime
14 In Any State, The U.S.A. And Its Territories, Military Court Or A Foreign Country?" In fact,
15 Respondent had been disciplined by the South Carolina Board on or about July 17, 2008.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License Number 658167, issued to Leta
20 Rochelle Simmons;

21 2. Ordering Leta Rochelle Simmons to pay the Board of Registered Nursing the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code Section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: December 15, 2010

Louise R. Bailey

LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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